



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/173187

PRELIMINARY RECITALS

Pursuant to a petition filed March 28, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on April 19, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly credited the petitioner's shelter deduction when calculating her monthly FoodShare (FS) benefits for February, March, and April 2016.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. The petitioner received \$16 in monthly FoodShare (FS) benefits in January and February 2016. In March 2016 she received \$37 in monthly FS benefits.
3. All of these monthly FS benefits were calculated using the limited utility allowance.

4. In January 2016 the petitioner reported that she is responsible for all of her utilities including heat. The petitioner also reported that she pays \$350 in a marital settlement agreement. The marital settlement agreement states that the petitioner must pay her ex-husband \$350 per month until she has paid \$22,500. If she fails to make a payment, the petitioner's home "shall be immediately placed on the market for sale at a price recommended by the listing broker." Although this is analogous to a mortgage or rental agreement, the agency refused to budget \$350 per month toward the petitioner's shelter expenses.
5. In March 2016 the petitioner again reported that she is responsible for all of her utilities including heat.
6. On March 7, 2016 the agency sent the petitioner a notice stating that effective April 1, 2016 her monthly FS benefits would increase to \$84.
7. On March 28, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

In calculating the petitioner's FS allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires the county to start with gross income, deducting a limited number of identified deductions from that income to calculate the adjusted income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a household size of 1 is \$155, per *FS Wisconsin Handbook*, 8.1.3. There are additional deductions including earned income deduction, excess medical and dependent care. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted if allowable shelter expenses exceed half of the adjusted income. 7 C.F.R. §273.9(d)(6)(ii). Allowable shelter expenses include "the food unit's reported monthly expense obligation for the current residence or shelter." *FS Wisconsin Handbook*, 4.6.7.1. The policy goes on to state examples of deductible shelter expenses including rent, mortgage, and property taxes.

The petitioner presents an unusual situation. It is clear from reading the marital settlement agreement that the principal asset was the family home where the petitioner now lives. The petitioner was not able to pay \$22,500 in a lump sum. The petitioner and her ex-husband have agreed that she pays him \$350 per month until she has paid him \$22,500 for the house. If she fails to make a payment, then her ex-husband gets to immediately list the house for sale.

There are many definitions of a mortgage. According to google a mortgage is "the charging of real (or personal) property by a debtor to a creditor as security for a debt (especially one incurred by the purchase of the property), on the condition that it shall be returned on payment of the debt within a certain period." According to businessdictionary.com a mortgage is a legal agreement that conveys the conditional right of ownership on an asset or property by its owner (the mortgagor) to a lender (the mortgagee) as security for a loan. <http://www.businessdictionary.com/definition/mortgage.html#ixzz48qRIP6WM>.

Although the petitioner presents a unique situation, her situation fits the definition of a mortgage. Her ex-husband is the creditor/mortgagor who holds the home as security. If the petitioner fails to pay this loan to her ex-husband, then he gets to immediately sell the home. This is similar to a foreclosure except more severe as there is no right of redemption period. This is not a convenient story made up by the petitioner. All of the facts and terms are included in the marital settlement agreement, which has been signed and accepted by Circuit Court. I therefore conclude that the agency should have included this monthly \$350 paid to the petitioner's ex-husband as a shelter expense. This change was reported and verified in January 2016, and thus should have impacted the petitioner's February FS benefits forward.

The agency also failed to budget the full heating allowance in February and March 2016. That change was reported in January 2016. Changes reported in January would affect February benefits. Thus, the petitioner should have also had this additional expense for February and March FS benefits.

CONCLUSIONS OF LAW

The agency incorrectly calculated the petitioner's February, March, and April FS benefits by failing to give her the full heating utility in February and March and a \$350 shelter expense for all three months.

THEREFORE, it is

ORDERED

That this case is remanded back to the agency with instructions to recalculate the petitioner's February, March, and April FS benefits giving her the full heating allowance and a \$350 shelter expense for all three months. This appeal is dismissed in all other respects. The agency shall comply with this order within 10 days from the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of May, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 17, 2016.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability